



REPUBLIC OF KENYA



**Omiti v Republic (Criminal Appeal 36 of 2024)  
[2025] KEHC 2581 (KLR) (12 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2581 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL 36 OF 2024  
DR KAVEDZA, J  
MARCH 12, 2025**

**BETWEEN**

**JASPHAT ORINA OMITI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on 15th May 2024 by Hon. Murage (PM) at Kibera Chief Magistrate's Court Sexual Offences Case No. E051 of 2023 Republic vs Jasphat Orina Omiti)*

**JUDGMENT**

1. The appellant was charged and after full trial convicted by the Subordinate Court of the offence of defilement contrary to section 8(1) as read with 8(3) of the *Sexual Offences Act* No. 3 of 2006. The particulars were that on 15<sup>th</sup> April 2023 at about 1900hrs at [Particulars withheld] Area in Dagoretti Sub-County within Nairobi County, the appellant intentionally and unlawfully caused his genital organ (penis) to penetrate the genital organ (vagina) of SKM a child aged 14 years. He was sentenced to serve twenty (20) years imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He contended that the medical evidence adduced did not adequately prove that he had defiled the complainant and that instead a DNA test would suffice.
3. This is the first appellate court and in *Okeno v R* [1972] EA 32, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyse and re-evaluate the evidence which was before the trial court and come to its own conclusions on that evidence without overlooking the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.



4. The complainant, SKM (PW2), after voir dire examination testified that she was born on 17th March 2009. She deposed that on 15th April 2023, at approximately 3:00 p.m., she visited the appellant, residing near Revival Redeemed Church, who thereafter made an unwelcome sexual advance. Upon her refusal, the appellant allegedly seized her hand, removed her trousers, and penetrated her vagina with his penis. At around 5:00 p.m., her mother, accompanied by a pastor and a police officer, arrived at the appellant's residence. The officer effected the appellant's arrest, whilst the complainant was conveyed to Nairobi Women's Hospital for medical examination, subsequently receiving a PRC form, a P3 form, and a GBVRC form. In cross-examination, she admitted to having previously slept at the appellant's premises and regarded him as a friend.
5. PW3, LK, the complainant's mother, testified that on 15th April 2023, at approximately 6:00 p.m., she returned home to find the complainant absent. Upon inquiry, she learned the complainant had been seen with the appellant and was directed to his residence within church premises. The pastor unlocked the gate, and upon the appellant opening his door, PW3 discovered her daughter on his bed. Accompanied by others, who expressed disquiet at the appellant hosting the complainant in his single-room dwelling, PW3 reported the matter to Kabete Police Station and escorted the complainant to the hospital. She identified the appellant in court.
6. PW1, John Njuguna, a clinician at Nairobi Women's Hospital, produced SKM's medical report on behalf of a colleague. He testified that on 16th April 2023, at 2:00 a.m., the 14-year-old complainant was examined, revealing no external genital or vaginal injuries, though her hymen bore an old tear. She received PEV treatment and a Hepatitis B vaccine, with a PRC form issued. He opined that these findings aligned with the complainant's account having engaged in sexual intercourse with the appellant.
7. PW4, PC Nancy Gathomi, the investigating officer, testified that on 16th April 2023, she assumed the case with the appellant in custody. She recorded the complainant's statement, visited the crime scene, and charged the appellant, producing the complainant's birth certificate, confirming her birth on 17th March 2009 and age of 14 at the incident's occurrence. She too identified the appellant in court.
8. In his defence, the appellant narrated that on 15<sup>th</sup> April 2023 at 10 pm, he had just arrived home when he heard people shouting at the gate. When they came into his house they asked him about the complainant's whereabouts, claiming that he was harbouring her in his house. He was arrested by two police officers and taken to Kabete Police Station. Upon cross-examination, he stated that he was the caretaker at Revival Restoration Worship Church which is why he stays within the church compound.
9. To succeed in a prosecution for defilement, it must be proven that the accused committed an act that caused penetration with a child. "Penetration" under Section 2 of the Act means, "the partial or complete insertion of the genital organs of a person into the genital organs of another person."
10. Further, section 8(1) and (2) of the [Sexual Offences Act](#), No. 3 of 2006 provides thus: -
  8. Defilement
    - (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
    - (3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.
11. In this case, the element of penetration was Penetration was substantiated, firstly, by the sworn testimony of the complainant, who recounted the appellant's act of inserting his penis into her vagina



on 15th April 2023, following her refusal of his sexual advance. This was corroborated by medical records adduced by PW1, John Njuguna, a clinician at Nairobi Women's Hospital, who detailed the examination of the complainant on 16th April 2023 at 2:00 a.m. Though no fresh injuries were observed, the presence of an old hymeneal tear corroborated her account, and she received requisite PEV treatment and a Hepatitis B vaccine, further evidenced by a PRC form.

12. The complainant's age was incontrovertibly established by her birth certificate, tendered by both PW3, LK, her mother, and PW4, PC Nancy Gathomi, the investigating officer. The certificate confirmed her birth on 17th March 2009, rendering her 14 years old at the time of the offence. The trial court thus rightly concluded that PW2 was a child within the meaning of the law.
13. Identification of the appellant posed no uncertainty. PW2 testified that she frequently visited his residence near Revival Redeemed Church, even sleeping over, as he was purportedly her friend. PW3, upon discovering her daughter in the appellant's single-room dwelling, and PW4, in her investigation, both identified him in court. Such recognition, stemming from a prior acquaintance, precluded any prospect of mistaken identity.
14. The foregoing analysis demonstrates that the prosecution discharged its burden, proving the case beyond reasonable doubt. The elements of penetration, the complainant's minority, and the appellant's identity were each established with requisite particularity. Accordingly, the conviction stands affirmed.
15. On sentence, the appellant was sentenced to serve twenty years imprisonment. During sentencing, the court considered the pre-sentence report and exercised discretion. In the premises, I see no reason to interfere with the sentence.
16. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 12<sup>TH</sup> DAY OF MARCH 2025**

.....

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Timoi h/b for Mutuma for the Respondent

Tonny Court Assistant

